

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Federal-State Joint Board On Universal |) | CC Docket No. 96-45 |
| Service |) | |

COMMENTS

BellSouth Corporation, on behalf of itself and its wholly owned subsidiaries, (“BellSouth”) hereby submits its comments in response to the *Public Notice*¹ wherein the Federal-State Joint Board on universal service solicits comments regarding the definition of universal service.

In 1997, the Commission determined that nine core services were eligible for universal service support: single-party service; voice grade access to the public switched network; dual tone multi-frequency signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation services for qualifying low-income consumers.² In defining these core services, the Commission and the Joint Board, as required by the Communications Act, considered the extent to which these services were essential to health, safety and education; were subscribed to by a

¹ *Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service*, CC Docket No. 96-45, *Public Notice*, DA 01-J-1, released on August 21, 2001 (“*Public Notice*”).

² *See In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8807-8825 (1997).

majority of residential customers; were being deployed by telecommunications carriers; and were deemed to be consistent with the public interest.³

In the *Public Notice*, the Joint Board invites comments on “what services, if any, should be added to or removed from the list of core services eligible for federal universal service support.”⁴ In addition to considering whether the definition of universal service should be modified, the Joint Board also solicits comments on several related aspects of universal service and the impact any modifications could have on universal service and competition. The Joint Board’s inquiry constitutes part of the ongoing obligation under the Communications Act to review periodically universal service to insure that the universal service fund continues to fulfill the objectives of the Act.

A. The Definition of Universal Service Should Not Be Modified

Based on the statutory criteria for determining services to be included within the definition of universal service, circumstances are not sufficiently different from when the Joint Board established the list of services currently under the umbrella of universal service to require a change. BellSouth does not believe that there is a factual predicate to support either expanding or contracting the existing list of supported services.

Rather than modifying the definition of universal service, the Joint Board and the Commission should focus on completing the unfinished tasks associated with universal service that remain. For example, implicit universal service subsidies remain in many state jurisdictions. As the Tenth Circuit Court of Appeals recently determined, the Commission has an obligation “to formulate its policies so as to achieve the goal of reasonable comparability by inducing

³ See 47 U.S.C. § 254(c)(1).

⁴ *Public Notice* at 2.

‘sufficient...State mechanisms’ to do so.’⁵ The Commission has not given the issue of implicit intrastate subsidies the attention that it requires. The Joint Board, instead of tampering with the definition of universal service, should look toward ways in which the Commission can effectuate the partnership contemplated in the Act between federal and state governments to support universal service.⁶ Resources would be better used in crafting the inducements for states to act so as to preserve and advance universal service. The Commission has the responsibility to ensure that the states act.⁷ Meeting that responsibility can be jeopardized by prematurely and unnecessarily altering the definition of universal service.

Alteration of the definition of universal service would also impact the structure of the federal universal service fund. The Commission has estimated that the federal universal service fund may increase from its current \$5.5 billion to \$7.9 billion by 2005. Expanding the functions and capabilities that fall within the definition of universal service would likely have a dramatic impact on the size of the universal service fund. Changes of a large magnitude would require the Commission to re-evaluate the adequacy of the current mechanism and its associated processes, such as the universal service cost model. The disruption to the existing federal universal service mechanism that a modification of the universal service definition could create first requires that any such modification be tested against the statutory criteria for defining core universal service and requires reaching the conclusion that modification of the definition of universal service is necessary to carrying out the purpose of the Act.

⁵ *Qwest Corporation v. Federal Communications Commission*, 258 F.3d 1191, 1200 (10th Cir. July 31, 2001).

⁶ *Id.* at 1203.

⁷ *Id.* at 1204.

B. Implications Of Changes To Universal Service Definitions On Section 214(e) Eligible Telecommunications Carrier Status

In order to be designated as an eligible telecommunications carrier (“ETC”), a common carrier must offer the services that are supported by the federal universal service support mechanism.⁸ The obvious effect of changing the universal service definition is that it impacts existing carriers’ ETC status and affects the ability of non-ETC carriers to obtain ETC designation. As to existing ETC carriers, to retain the designation, they must be capable of offering the new services that are added to the universal service definition. Whether existing ETCs would lose their ETC status would be determined by the scope of the change. While BellSouth does not believe any change in the definition is warranted, the Joint Board and Commission, should they choose to modify the definition, would have to examine the impact a definition change would have on existing ETCs.

Likewise, any change in the universal service definition would have to be evaluated for its impact on carriers obtaining ETC status in the future. During the initial Section 254 implementation proceedings, the Joint Board recognized that an overly expansive definition of universal service could have perverse and unanticipated effects. As the Joint Board reasoned, because an ETC must provide the core services supported by universal service, an overly expansive definition could chill competitive entry and, indeed, act as a barrier to entry for some carriers.⁹ This concern remains valid today.

⁸ See 47 U.S.C. § 214(e)(1)(a).

⁹ See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87 (1996).

C. Impact Of Universal Service Definition Changes On Competition And Network Modernization

As discussed above, an overly expansive definition of universal service can have unanticipated competitive effects in that the definition operates to exclude new carriers from obtaining ETC status. In such circumstances, universal service support would act as a toll collector at the competitive gateway, allowing some carriers through and turning others away. Such a role for universal service support is neither contemplated under the Act nor desired.

Similarly, universal service definitions should not be used to drive network modernization. Attempting to tinker with universal service definitions as a means of inducing network changes is counterproductive. The fastest way to have new technology deployed is to allow market forces to select the technology and select the services to be offered. Indeed, the statutory criterion for defining universal service include that the service should be subscribed to by a majority of residential customers, acknowledging the importance of the marketplace in being a determinant in the definition of universal service. The most certain way of getting it wrong is to substitute regulatory fiat for market-based decisions.

Illustrative of misguided efforts associated with regulatory tinkering is revisiting the issue of redefining the bandwidth definition of voice-grade access. The purported aim of redefining voice-grade bandwidth is to ensure that rural subscribers can obtain dial-up Internet access at 28.8 kbps. When the issue was first considered, the record indicated that modification of the definition of voice grade access will not ensure that the modem connection between the end user and the Internet service provider will synchronize at 28.8 kbps. Many factors impact the speed at which two modems communicate. Simply changing the definition of voice grade bandwidth will not guarantee anything, let alone modem to modem synchronization at 28.8 kbps. Changing the bandwidth definition would not change the fact that there are neither industry standards nor

specifications developed to support the changed definition. Without these parameters, the electrical performance of the “enhanced” bandwidth voice grade service could adversely impact other telecommunications services, including xDSL services. Even if these standards existed, this type of network change would be extremely costly without any guarantee of a public benefit. The absolute folly of such a requirement is that it would divert scarce resources from investment in technology to investment in technical alteration of existing technology.

D. Advanced Services

Another area of inquiry is whether advanced services should be included within the definition universal service. At this time, BellSouth does not believe any advanced service meets the statutory criteria associated with the definition of universal service. No advanced service has assumed the role of a basic or core telecommunications service. The marketplace for advanced services is evolving and continues to develop. The Joint Board does not want to take any action that would arrest the development of broadband capabilities and other advanced services. Yet, any attempt to sweep within the definition of universal service some advanced service capability would have such an effect. It would skew market demand and alter investment decisions. At this early juncture, the last result that the Joint Board or Commission should want to occur is that universal service derails broadband development.

Neither the Joint Board nor Commission should interfere with the market development of advanced services. The marketplace, not regulators, should determine the services and technologies to be deployed. To increase the pace of broadband deployment, the regulation of advanced telecommunications services offered by local exchange carriers should be reduced.¹⁰

¹⁰ Certainly state governments can contribute to the development and deployment of advanced services through the incentive programs developed by their respective economic development agencies or through tax incentives.

E. Soft Dial Tone Services

Soft dial tone services should not be added to the core services covered by universal service support. Such services are not so widespread and subscribed to by the majority of residential customers as to fall within the parameters of the statutory criteria for universal service. To the extent that such services may or may not contribute to the public safety is a matter that is local in nature and better addressed at the state level. The fact that such services are not supported at the federal level would not preclude a state from including soft dial tone in a state universal service fund.

CONCLUSION

There have not been dramatic changes that warrant a modification to the definition of universal service. In the absence of compelling marketplace changes, any action to modify the definition of universal service would be counterproductive. Accordingly, the Joint Board should recommend that the Commission retain the existing definition of universal service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 5th day of November 2001 served the following parties to this action with a copy of the foregoing **COMMENTS** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed on the attached service list.

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